

is intended merely to provide the railroad with an opportunity to prepare its report to FRA, and does not excuse continued noncompliance.

(d) This subpart requires the submission of remedial actions reports for the general categories of physical defects, recordkeeping and reporting violations, and filing violations, where the railroad can literally and specifically correct a failure to comply with a provision of the Federal railroad safety laws, as reasonably determined by the FRA Safety Inspector. No railroad is required to submit a report for a failure involving either a completed or past transaction or a transaction that it can no longer remedy.

§ 209.403 Applicability.

This subpart applies to any railroad that receives written notification from an FRA Safety Inspector both (i) that assessment of a civil penalty will be recommended for its failure to comply with a provision of the Federal railroad safety laws and (ii) that it must submit a remedial actions report.

§ 209.405 Reporting of remedial actions.

(a) Except as provided in § 209.407, each railroad that has received written notification on Form FRA F 6180.96 from an FRA Safety Inspector both that assessment of a civil penalty will be recommended for the railroad's failure to comply with a provision of the Federal railroad safety laws and that it must submit a remedial actions report, shall report on this form all actions that it takes to remedy that failure. The railroad shall submit the completed form to the FRA Safety Inspector within 30 days after the end of the calendar month in which the notification is received.

(1) *Date of receipt of notification.* If the FRA Safety Inspector provides written notification to the railroad by first class mail, then for purposes of determining the calendar month in which notification is received, the railroad shall be presumed to have received the notification five business days following the date of mailing.

(2) *Completion of Form FRA F 6180.96, including selection of railroad remedial action code.* Each railroad shall com-

plete the remedial actions report in the manner prescribed on the report form. The railroad shall select the one remedial action code on the reporting form that most accurately reflects the action or actions that it took to remedy the failure, such as, repair or replacement of a defective component without movement, movement of a locomotive or car for repair (where permitted) and its subsequent repair, completion of a required test or inspection, removal of a noncomplying item from service but not for repair (where permitted), reduction of operating speed (where sufficient to achieve compliance), or any combination of actions appropriate to remedy the noncompliance cited. Any railroad selecting the remedial action code "other remedial actions" shall also furnish FRA with a brief narrative description of the action or actions taken.

(3) *Submission of Form FRA F 6180.96.* The railroad shall return the form by first class mail to the FRA Safety Inspector whose name and address appear on the form.

(b) Any railroad concluding that the violation alleged on the inspection report may not have occurred may submit the remedial actions report with an appropriate written explanation. Failure to raise all pertinent defenses does not foreclose the railroad from doing so in response to a penalty demand.

§ 209.407 Delayed reports.

(a) If a railroad cannot initiate or complete remedial actions within 30 days after the end of the calendar month in which the notification is received, it shall—

(1) Prepare, in writing, an explanation of the reasons for such delay and a good faith estimate of the date by which it will complete the remedial actions, stating the name and job title of the preparer and including either:

(i) A photocopy of both sides of the Form FRA F 6180.96 on which the railroad received notification; or

(ii) The following information:

(A) The inspection report number;

(B) The inspection date; and

(C) The item number; and

(2) Sign, date, and submit such written explanation and estimate, by first

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class mail, to the FRA Safety Inspector whose name and address appear on the notification, within 30 days after the end of the calendar month in which the notification is received.

(b) Within 30 days after the end of the calendar month in which all such remedial actions are completed, the railroad shall report in accordance with the remedial action code procedures referenced in § 209.405(a). The additional time provided by this section for a railroad to submit a delayed report shall not excuse it from liability for any continuing violation of a provision of the Federal railroad safety laws.

§ 209.409 Penalties.

Any person who violates any requirement of this subpart or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)) for knowingly and willfully falsifying reports required by this subpart.

[59 FR 43676, Aug. 24, 1994, as amended at 63 FR 11619, Mar. 10, 1998; 69 FR 30592, May 28, 2004]

EFFECTIVE DATE NOTE: At 72 FR 51196, Sept. 6, 2007, § 209.409 was amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”, effective October 9, 2007.

APPENDIX A TO PART 209—STATEMENT OF AGENCY POLICY CONCERNING ENFORCEMENT OF THE FEDERAL RAILROAD SAFETY LAWS

The Federal Railroad Administration (“FRA”) enforces the federal railroad safety statutes under delegation from the Secretary of Transportation. See 49 CFR 1.49 (c), (d), (f), (g), and (m). Those statutes include the Federal Railroad Safety Act of 1970 (“Safety Act”), 45 U.S.C. 421 *et seq.*, and a group of

statutes enacted prior to 1970 referred to collectively herein as the “older safety statutes”: The Safety Appliance Acts, 45 U.S.C. 1–16; the Locomotive Inspection Act, 45 U.S.C. 22–34; the Accident Reports Act, 45 U.S.C. 38–43; the Hours of Service Act, 45 U.S.C. 61–64b; and the Signal Inspection Act, 49 App. U.S.C. 26. Regulations implementing those statutes are found at 49 CFR parts 213 through 236. The Rail Safety Improvement Act of 1988 (Pub. L. No. 100–342, enacted June 22, 1988) (“RSIA”) raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. FRA also enforces the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, as it pertains to the shipment or transportation of hazardous materials by rail.

THE CIVIL PENALTY PROCESS

The front lines in the civil penalty process are the FRA safety inspectors: FRA employs over 300 inspectors, and their work is supplemented by approximately 100 inspectors from states participating in enforcement of the federal rail safety laws. These inspectors routinely inspect the equipment, track, and signal systems and observe the operations of the nation’s railroads. They also investigate hundreds of complaints filed annually by those alleging noncompliance with the laws. When inspection or complaint investigation reveals noncompliance with the laws, each noncomplying condition or action is listed on an inspection report. Where the inspector determines that the best method of promoting compliance is to assess a civil penalty, he or she prepares a violation report, which is essentially a recommendation to the FRA Office of Chief Counsel to assess a penalty based on the evidence provided in or with the report.

In determining which instances of non-compliance merit penalty recommendations, the inspector considers:

- (1) The inherent seriousness of the condition or action;
- (2) The kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation;
- (3) Any actual harm to persons or property already caused by the condition or action;
- (4) The offending person’s (*i.e.*, railroad’s or individual’s) general level of current compliance as revealed by the inspection as a whole;
- (5) The person’s recent history of compliance with the relevant set of regulations, especially at the specific location or division of the railroad involved;
- (6) Whether a remedy other than a civil penalty (ranging from a warning on up to an emergency order) is more appropriate under all of the facts; and
- (7) Such other factors as the immediate circumstances make relevant.